

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LASONJA BROWN,

Plaintiff,

V.

CHIEF BROWN, ET AL.,

Defendants.

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No. 3:16-cv-1976-B-BN

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

This *pro se* action has been referred to the undersigned United States magistrate judge for initial screening pursuant to 28 U.S.C. § 636(b) and a standing order of reference from United States District Judge Jane J. Boyle. The undersigned issues the following findings of fact, conclusions of law, and recommendation that, for the reasons stated below, the Court should dismiss this action without prejudice pursuant to Federal Rules of Civil Procedure 41(b).

Background

On July 6, 2016, Plaintiff LaSonja Brown filed this action against the Dallas Police Department, its then chief, a police detective, and another individual, and she moved for leave to proceed *in forma pauperis* (“IFP”). *See* Dkt. Nos. 3 & 5. On July 11, 2016, the Court issued a questionnaire to Plaintiff and a notice of deficiency as to her noncompliant IFP motion. *See* Dkt. Nos. 6 & 7. Verified responses to the questionnaire and a compliant IFP motion were due to be filed no later than August 10, 2016. *See id.*

Plaintiff was warned, as to the questionnaire, that “[f]ailure to provide answers to all questions may result in the dismissal of the complaint for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b),” Dkt. No. 7 at 1, and the Court warned her as to the IFP motion that “[f]ailure to either pay the filing fee or file a renewed motion by August 10, 2016 will result in a recommendation that the complaint be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b),” Dkt. No. 6 at 1-2.

As of today, it is more than three months past the deadline for Plaintiff to comply with the Court’s orders and more than four months since she filed this action, and Plaintiff has yet to comply or otherwise contact the Court.

Legal Standards and Analysis

Under Federal Rule of Civil Procedure 41(b), “a district court may dismiss an action *sua sponte* if the plaintiff fails to comply with court orders.” *Nottingham v. Warden, Bill Clements Unit*, 837 F.3d 438, 440 (5th Cir. 2016) (citing FED. R. CIV. P. 41(b); *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988) (per curiam)). Under the same rule, a district court also “may *sua sponte* dismiss an action for failure to prosecute.” *Rosin v. Thaler*, 450 F. App’x 383, 383-84 (5th Cir. 2011) (per curiam) (citations omitted)). Such authority “flows from the court’s inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

A Rule 41(b) dismissal may be with or without prejudice. *See Long v. Simmons*, 77 F.3d 878, 879-80 (5th Cir. 1996).

Although “[l]esser sanctions such as fines or dismissal without prejudice are usually appropriate before dismissing with prejudice, ... a Rule 41(b) dismissal is appropriate where there is ‘a clear record of delay or contumacious conduct by the plaintiff and when lesser sanctions would not serve the best interests of justice.’”

Nottingham, 837 F.3d at 441 (quoting *Bryson v. United States*, 553 F.3d 402, 403 (5th Cir. 2008) (per curiam) (in turn quoting *Callip v. Harris Cnty. Child Welfare Dep’t*, 757 F.2d 1513, 1521 (5th Cir. 1985))); *see also Long*, 77 F.3d at 880 (a dismissal with prejudice is appropriate only if the failure to comply with the court order was the result of purposeful delay or contumacious conduct and the imposition of lesser sanctions would be futile); *cf. Nottingham*, 837 F.3d at 442 (noting that “lesser sanctions” may “include assessments of fines, costs, or damages against the plaintiff, conditional dismissal, dismissal without prejudice, and explicit warnings” (quoting *Thrasher v. City of Amarillo*, 709 F.3d 509, 514 (5th Cir. 2013))).

By failing to comply with the Court’s orders, Plaintiff has prevented this action from proceeding, and she therefore has failed to prosecute his lawsuit and obey the Court’s orders. A Rule 41(b) dismissal of this lawsuit without prejudice is warranted under these circumstances. And the undersigned concludes that lesser sanctions would be futile. The Court is not required to delay the disposition of this case until such time as Plaintiff decides comply with the Court’s orders. Accordingly, the Court should exercise its inherent power to prevent undue delays in the disposition of pending case

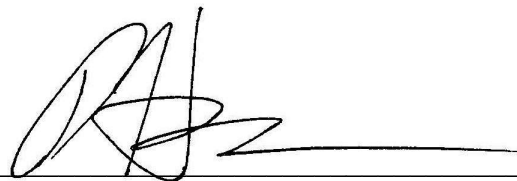
and *sua sponte* dismiss this action without prejudice.

Recommendation

The Court dismiss this action without prejudice pursuant to Federal Rules of Civil Procedure 41(b).

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: November 17, 2016

A handwritten signature in black ink, appearing to read 'D. Horan', is written over a horizontal line.

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE